

October 9, 2008

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **E0700914**

DEBORAH CALLAHAN
Code Enforcement Appeal

Location: 18554 West Lake Desire Drive SE

Appellant: Deborah Callahan
represented by **Trevor Wright**
18554 West Lake Desire Drive SE
Renton, WA 98058
Telephone: (425) 226-7464

King County: Department of Development and Environmental Services (DDES)
represented by **Holly Sawin**
900 Oakesdale Avenue Southwest
Renton, Washington 98055
Telephone: (206) 296-6772
Facsimile: (206) 296-6604

SUMMARY OF DECISION/RECOMMENDATION:

Department's Preliminary Recommendation:	Deny the appeal
Department's Final Recommendation:	Deny the appeal
Examiner's Decision:	Deny the appeal; allow additional time for submission of permit application

ISSUES AND TOPICS ADDRESSED:

- Conversion to accessory dwelling unit without required permits
- Waiver of penalty

SUMMARY OF DECISION:

The property owner's appeal is denied; application for permits is required; and civil penalty is waived.

EXAMINER PROCEEDINGS:

Hearing opened: September 30, 2008
Hearing closed: September 30, 2008

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. On February 28, 2008, the King County Department of Development and Environmental Services issued a notice of King County code violation, civil penalty order, abatement order, notice of lien, duty to notify ("Notice and Order") to Deborah Callahan. The property subject to the Notice and Order is located at 18554 West Lake Desire Drive Southeast (Renton) in unincorporated King County. Deborah Callahan is the owner of the subject property.

The Notice and Order alleged violation of the King County Code for the conversion of a garage into an accessory dwelling unit without the required permits.
2. A timely appeal of the Notice and Order was filed by Deborah Callahan on March 17, 2008. The Statement of Appeal asserts that the structure in issue existed with its current improvements at the time the appellant purchased the property in 1989; that the county was aware of the structure and improvements at that time, and made no effort to notify the appellant that the improvements were in violation of any laws; that Ms. Callahan is in a fragile state of health; and is dependent on the income from the rental unit in the structure to support herself.
3. The residence and a detached two-car garage were constructed on the subject property pursuant to a building permit issued in or about 1958. At some time prior to 1984, the two-car detached garage was converted to an accessory dwelling unit, including a living area, bathroom and kitchen. The appellant acquired the property in 1989. At the time of the appellant's acquisition, she was unaware that the accessory dwelling unit had not been legally permitted.
4. KCC 23.36.030.b provides, "if an owner of property where a violation has occurred. . . (demonstrates) that the violation was caused by another person or entity not the agent of the property owner and without the property owner's knowledge or consent, such property owner shall be responsible only for abatement of the violation. . . ."
5. The subject property is 0.47 acre in size. The zone classification is R-6. The current residence and accessory dwelling unit are served by septic tank and drainfield. It is anticipated that sewer will be constructed to the property sometime in 2009.

CONCLUSIONS:

1. The accessory dwelling unit was established on the property by conversion of a detached garage, without required permits and approvals. The appellant's appeal of the Notice and Order should be denied, with respect to the requirement that the property be brought into compliance with the King County Code.
2. The appellant has demonstrated that the violation of the King County Code was caused by another person who is not the agent of the property owner, and who committed the violation without the current property owner's knowledge or consent. Therefore, the current property is responsible only for abatement of the violation, and no civil penalty should be assessed against the appellant.
3. A reasonable period of time to allow the appellant to apply for the necessary permits to legally establish the use of the accessory dwelling unit is 180 days. If the appellant fails to apply for the required permits for the ADU, or the permits are not approved, use of the ADU should be terminated not less than 180 days from the date of this decision, or 60 days from the date of denial of the required permits, whichever is applicable. Failure by the appellant to discontinue the use of the ADU would be within the control of the appellant, and should result in the imposition of the civil penalty set forth in the Notice and Order.

DECISION:

1. The appeal by Deborah Callahan of the February 28, 2008 Notice and Order is granted in part, and denied in part as follows: The civil penalties for the prior conversion of the detached garage into an accessory dwelling unit without required permits are waived for the appellant.
2. The allegation that the two-car detached garage that had been permitted on the property was converted into an accessory dwelling unit, without required permits, inspections and approvals, is affirmed.
3. The appellant shall make application to the King County Department of Public Health for approval of the conversion of the garage into an accessory dwelling unit within 180 days of the date of this decision. Within 30 days of approval by the Department of Public Health, the applicant shall submit a complete application to King County DDES for an ABC building permit for the existing structure.
4. If the appellant fails to submit an application to the Department of Public Health within 180 days to approve the ADU, or fails to submit an application to DDES for a building permit within 30 days after receipt of Health Department approval, or in the event the application is denied, the applicant shall discontinue the use of the subject ADU within 180 days of this decision, or within 60 days following denial of the application by the Department of Public Health or denial of the building permit application by DDES, whichever is applicable. Failure to discontinue the use within the applicable time limit shall subject the appellant to the civil penalties set forth in the Notice and Order.
5. If the appellant does not obtain the required permits, the appellant shall apply for a demolition permit and building permit, as necessary, to restore the building that is the subject of this proceeding to garage and storage use, or such other accessory use as may be permitted. If the appellant fails to do so within the applicable time period set forth for discontinuance of the use,

as set forth in paragraph 4 above, the appellant shall be subject to the penalty set forth in the Notice and Order , and the violation may be abated by King County.

ORDERED this 9th day of October, 2008.

James N. O'Connor
King County Hearing Examiner *pro tem*

NOTICE OF RIGHT TO APPEAL

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding code enforcement appeals. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within 21 days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE SEPTEMBER 30, 2008, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E0700914

James N. O'Connor was the Hearing Examiner in this matter. Participating in the hearing were Holly Sawin representing the Department; Trevor Wright representing the Appellant; and Deborah Callahan the Appellant.

The following Exhibits were offered and entered into the record:

Exhibit No. 1	DDES staff report to the Hearing Examiner for E0700914
Exhibit No. 2	Copy of the Notice & Order issued February 28, 2008
Exhibit No. 3	Copy of the Notice and Statement of Appeal received March 17, 2008
Exhibit No. 4	Copies of codes cited in the Notice & Order
Exhibit No. 5	Kin County Assessor Records for subject property dated November 26, 2007
Exhibit No. 6	Photographs of subject property taken by Holly Sawin in August and September
Exhibit No. 7	Copy of site plan for addition to subject property
Exhibit No. 8	Copy of site plan submitted for permit B97A1514
Exhibit No. 9	<i>not offered</i>
Exhibit No. 10	Copy of additional codes applicable to the instant case
Exhibit No. A1	Record of Lot Survey dated August, 2005
Exhibit No. A2	King County Assessor records for 1958, 1972
Exhibit No. A3	Copies of records for permit R8905356
Exhibit No. A4	Copy of construction permit B97A1514
Exhibit No. A5	Copy of electrical work permit application 1234842
Exhibit No. A6	Copy of letter dated July 26, 2008 from John Wall, neighbor
Exhibit No. A7	Photograph of subject property taken in 2008
Exhibit No. A8	Copy of King County webpage titled "Historical Zoning Records in King County"

- Exhibit No. A9 Copy of Oral Opinion for King County Superior Court Cause No. 520583, dated July 23, 1956
- Exhibit No. A10 *Journal of Proceedings of County Commissioners*, King County, Washington, June 2, 1937
- Exhibit No. A11 *Districting Resolution 11373*, Board of County Commissioners, King County, adopted June 13, 1949
- Exhibit No. A12 *Resolution 16426*, Board of County Commissioners, King County, adopted May 15, 1956
- Exhibit No. A13 *Journal of Proceedings of County Commissioners*, King County, Washington, August 12, 1958
- Exhibit No. A14 DDES staff report to the Hearing Examiner for E0700914

JNOC:vsm
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